

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BETTY J. CAMPBELL,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:04-CV-2706-D
VS.	§	
	§	
JO ANNE B. BARNHART,	§	
COMMISSIONER OF SOCIAL	§	
SECURITY,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION

Plaintiff Betty J. Campbell ("Campbell") brings this action under § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), for judicial review of the final decision of the Commissioner of Social Security ("Commissioner") denying her application for disability insurance benefits under title II of the Act. In an August 9, 2005 order, the court raised *sua sponte* the question whether the administrative law judge ("ALJ") applied an incorrect legal standard at the second step of the five-step sequential process. The court permitted the Commissioner to file a supplemental memorandum demonstrating either that the ALJ did not apply the wrong standard or that any resulting error is harmless.

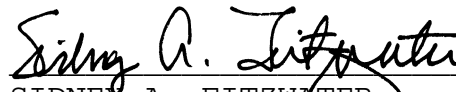
In her supplemental memorandum, the Commissioner concedes that the ALJ applied an incorrect standard to determine that Campbell's impairment was not severe, but she argues that there is substantial evidence in the record from which the ALJ could have concluded that Campbell's impairment was not severe according to the standard

required by *Stone v. Heckler*, 752 F.2d 1099 (5th Cir. 1985). The court cannot determine from its review of the record and of the ALJ's decision, however, that the ALJ would have reached the same result had he applied the proper standard. The Commissioner has therefore failed to demonstrate that the ALJ's error is harmless. See *Frank v. Barnhart*, 326 F.3d 618, 622 (5th Cir. 2003) (per curiam) (holding that error was harmless where ALJ would have reached same conclusion in absence of error).

On remand the Commissioner is free to consider the arguments Campbell advances in her motion for summary judgment. The court intimates no view concerning the merits of these arguments.

Accordingly, the Commissioner's decision is VACATED and this matter is REMANDED to the Commissioner for further proceedings consistent with this opinion.

August 17, 2005.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE